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3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

5 **CHARLESTON DIVISION**

6 IN RE: DIGITEK  
7 PRODUCTS LIABILITY LITIGATION

MDL NO. 1968

APPLICATION OF C. BROOKS  
CUTTER FOR APPOINTMENT TO  
THE PLAINTIFFS' STEERING  
COMMITTEE

9 THIS DOCUMENT RELATES TO ALL CASES  
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14 I am counsel in *Harmon vs. Actavis Totowa, LLC, et al*, and I write to apply for  
15 appointment to the Plaintiffs' Steering Committee in this MDL. As described below, I have  
16 substantial professional experience in medical device and drug litigation; I have a strong interest  
17 in contributing to this litigation; and I have successfully worked with others in similar cases.

18 **PROFESSIONAL BACKGROUND AND EXPERIENCE**

19 I am a partner in the firm of Kershaw, Cutter & Ratinoff, LLP, a Sacramento, California  
20 law firm with a litigation practice both in California and throughout the country. My educational  
21 background is as follows: B.A. U.C. Berkeley, 1980; M. Phil. Cambridge University, 1982; J.D.  
22 Stanford Law School, 1985. I clerked for the Chief Judge of the U.S. Court of Appeals for the  
23 Ninth Circuit, James R. Browning from 1985-1986, and then worked in the Washington D.C.  
24 office of Latham and Watkins from 1986-1990.

25 My family and I moved to Sacramento in 1990, and since that time I have exclusively  
26 represented plaintiffs in personal injury, class action, and mass tort matters. Significant medical  
27 products matters I have been involved with in recent years include In re: Guidant Corp.  
28 Implantable Defibrillators Products Liability Litigation, where I was appointed by Judge Frank to

1 the Plaintiffs' Steering Committee, and designated by the PSC to be co-trial counsel. The case  
2 settled on the eve of trial with expert discovery and trial preparation substantially completed. I  
3 am currently serving as a member of the Plaintiffs' Steering Committee in In re: Medtronic Sprint  
4 Fidelis Leads Litigation, having been appointed by Judge Kyle in St. Paul, Minnesota.

5 Other significant cases I have worked on include serving as lead counsel in Stickles, et al.  
6 v. Ford Motor Credit Corporation, a nationwide class action resolved on the eve of trial with  
7 FMCC agreeing to return up to \$80 million dollars to the class, and Vanderpool v. Allstate, a  
8 California class action in which I was co-lead counsel and Allstate agreed to a complete refund,  
9 plus interest, to the class. I also served as co-lead counsel in a nationwide case involving Vicryl  
10 sutures, which I tried to a final conclusion in a confidential proceeding. On behalf of Trial  
11 Lawyer's Care, I represented a family before the U.S. Victim's Compensation Fund on a pro  
12 bono basis arising from a death in the World Trade Center on September 11, 2001.

13 I serve as a Judge Pro Tem in the Sacramento County Superior Court, and the El Dorado  
14 County Superior Court. I was named 2007 Advocate of the Year by the Capital City Trial's  
15 Association; I was a finalist for the 2005 Consumer Attorney of the Year for the Consumer  
16 Attorneys of California, and I am AV rated by Martindale Hubbell.

17 **I AM WILLING AND AVAILABLE TO COMMIT RESOURCES TO THIS PROJECT**

18 I am fully prepared to devote the necessary resources on behalf of the people I represent,  
19 and the people the PSC represents to bring justice to the people who have suffered significant  
20 injuries as a result of the defective Digitek they consumed. This is an important case with  
21 significant injuries and my firm has substantial resources, including 10 lawyers, and over 20  
22 support staff to devote to the project as necessary.

23 **I WILL WORK COOPERATIVELY WITH OTHERS**

24 My past professional experience demonstrates a commitment to, and an ability to work  
25 well with others. In particular, this includes working with a substantial group of co-counsel from  
26 around the country in developing the Guidant case and getting it ready for trial, and filling a  
27 similar role in other litigation. Much of my time is spent in either class or mass cases where it is  
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1 imperative that counsel work cooperatively and collegially with each other and with opposing  
2 counsel. I have already reached out to liaison counsel appointed by this Court, and expressed my  
3 willingness to serve, hopefully as a member of a cohesive, cooperative group. I am absolutely  
4 committed to proceeding with this litigation in a respectful, collegial, and ethical manner.

5 **I HAVE SUBSTANTIAL EXPERIENCE IN THIS TYPE OF LITIGATION**

6 As described in my professional background, I have been appointed by several federal  
7 judges to Plaintiffs' Steering Committees in medical, drug, or device litigation. Beyond the  
8 Plaintiffs' Steering Committee memberships, I've actually worked hard and achieved good results  
9 in those matters in which I have participated. My firm and I have also represented large groups of  
10 individuals from around the country in drug or device litigation that did not result in an MDL.  
11 Accordingly, we have very substantial experience, including working with many of the other top  
12 firms in this arena, and with and against many of the experts that are customarily deployed in  
13 these types of cases. I believe that all of this experience will be of assistance to the Plaintiffs'  
14 Steering Committee in this litigation.

15 **CONCLUSION**

16 For the reasons set forth above, I respectfully request that this Court appoint me as a  
17 member of the Plaintiffs' Steering Committee in this litigation. If appointed, I will diligently  
18 work to bring this case to a successful conclusion on behalf of the people represented by the  
19 Plaintiffs' Steering Committee.

20 Respectfully submitted,

21 Dated: October 17, 2008

22 **KERSHAW, CUTTER & RATINOFF LLP**

23  
24 By



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